

MONTGOMERY COUNTY, STATE OF MARYLAND

MARCIELA LUNA,	:	COMMISSION ON COMMON
RAVINDER ARNEJA,	:	OWNERSHIP COMMUNITIES
	:	
Complainants,	:	
	:	Case Nos. 35-08 & 36-08
v.	:	
	:	Panel Hearing Date: July 9, 2009
GOSHEN RUN HOMEOWNERS	:	
ASSOCIATION,	:	
	:	
Respondent.	:	Decision Issued: September 30, 2009
	:	(Panel: Burgess, Farrar and Gannon)
	:	

Memorandum Decision and Order By: Ursula Koenig Burgess

MEMORANDUM DECISION AND ORDER

The above-captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland ("Commission") for hearing pursuant to Chapter 10B of the Montgomery County Code 2004, as amended. The duly appointed Hearing Panel considered the testimony and evidence of record and finds, determines and orders as follows:

PROCEDURAL BACKGROUND

On or about July 11, 2008 the Complainants, Marciela Luna ("Luna") and Ravinder Arneja ("Arneja") (collectively, "Complainants"), filed separate complaints against Respondent, Goshen Run Homeowners Association ("Goshen Run" or "Association") with the Commission challenging, *inter alia*, the Association's procedure for the July 2007 elections and annual meeting, its failure to allow full access to the Association's documents, and its curtailment of the terms of two directors on the Board. The complaints were consolidated and sent to Goshen Run for a response. Goshen Run, by counsel, responded to the Commission by letter dated August 11, 2008

generally denying all of the allegations in the complaints and requesting that the matter be set for hearing. The Commission, by letter dated August 29, 2008, asked counsel for the Association to provide details to support the general denial. By letter dated September 19, 2008, counsel for Goshen Run addressed several of the allegations in further detail; however, he asked that additional information and details be obtained from the Complainants for several allegations so that he understood the allegations and could respond. The Complainants advised the Commission that they would consent to mediation, but Goshen Run rejected the offer. The Commission sent a letter to the Complainants on October 28, 2008, asking for details regarding several allegations in their complaints. The Complainants failed to respond, although Arneja did send in an amendment to the Complaint with additional allegations. The Commission sent another letter to the Complainants on December 12, 2008 with a form to be completed by each setting forth details to support certain allegations in their complaints. In addition, Arneja's amendment was provided to the Association, which provided a response to the amendment on January 9, 2009. By January 23, 2009, both of the Complainants had provided their responses to the Commission's December 12, 2008 letter.

On March 4, 2009, the Commission accepted jurisdiction of the complaints, but only for five distinct issues: whether the Association, in violation of the Association's governing documents (1) failed to allow inspection of Association documents by the Complainants, (2) improperly reduced the terms of office of the Complainants, (3) did not allow all candidates for election to the Board of Directors an equal opportunity to

submit statements in the 2008¹ election, (4) allowed the manager to submit open proxy ballots in the 2008¹ election and (5) falsified Arneja's payment record in order to disqualify him as a candidate in the 2008¹ election. On March 5, 2009, the Commission sent a letter to all parties detailing the specific issues accepted by the Commission and that the hearing was scheduled for April 22, 2009. The Complainants subsequently retained counsel and on April 17, 2009, requested that the hearing be continued to accommodate her schedule. The request was granted and despite the parties' best efforts to locate an earlier date, the hearing was scheduled for July 9, 2009.

FINDINGS OF FACT

1. Complainants each own a single family home located within the Goshen Run subdivision and are bound by the Association's Declaration of Covenants and Restrictions ("Declaration"), By-laws, and Rules and Regulations (collectively "Governing Documents.") The Declaration is recorded in the Montgomery County Circuit Court land records. Other rules and regulations are filed with the Montgomery County Homeowners Association Depository.

2. Goshen Run is a Maryland homeowners association within the meaning of the Maryland Homeowners Association Act. Md. Code Ann., Real Prop. §§§ 11B-101 to -117. Goshen Run employs a professional management company, The Commercial Management Group ("TCMG"), which was hired by the Association in June 2008.

3. In 2006, the Complainants were elected to the Board of Directors, and it was their understanding that they were elected to serve a three-year term on the Board. No annual meeting was held in 2007.

¹ While the correspondence from the CCOC indicates that these were issues in the 2007 election, no election was conducted in 2007 and that the actual election at issue is the 2008 election. Presumably, this was a typographical error.

4. In 2008, all seven of the current Board positions were placed on the ballot for election. Neither of the Complainants ran for the Board at that meeting.

5. In 2008, prior to the scheduled annual meeting, Complainant Arneja was told that his homeowner's assessment account was delinquent.

6. In May 2009, the Complainants made their first request to review the Association's documents to TCMG and they were given the opportunity to inspect them on June 4, 2009.

7. Complainant Luna was the Board Secretary from early 2007 through the 2008 election. When she became the Board Secretary, she was given a binder which contained minutes of Board meetings and other relevant documents through March 2007.

8. An election has been held already this year and neither Complainant ran for an open Board position.

CONCLUSION OF LAW

I. Complainants' Allegation that the Association Prohibited Them from Inspecting the Association's Books and Records is not Supported by the Evidence

Complainant Arneja testified that between June 2007 and 2008 he wanted to look at the Association's financial records, but was not permitted to do so. He testified that he left several voice mail messages for the Association's management company at the time, IKO Real Estate, Inc. ("IKO"), requesting an opportunity to review the Association's records at IKO's office. He testified that he did not receive any phone calls back. He further testified that he did not physically go to IKO's office to review the records, nor did he produce any letters or written correspondence that he sent to IKO

requesting an opportunity to review records. The current President of Goshen Run, Lisa Gross ("Gross"), testified that she and Arneja were on the Board of Directors during this time frame and that she knew that Arneja wanted to review records. She testified that on several occasions she offered to accompany Arneja to the IKO office to assist him in getting access to the records but that he never accepted her offer.

Complainant Luna testified that when she took over as the Secretary of the Board, she was given a binder. The binder appeared to be missing documents for the Association which came into existence after March 2007. Luna testified that when she asked for additional documents, she was told there were none.

Gross testified that the binder was maintained by the prior Board Secretary and it was given to her in February or March 2007 when the Secretary resigned. Gross testified that although she assisted in taking minutes for the Board, she did not do anything to keep the binder up to date with the Association's documents. She stated that she gave Luna all of the documents she had when Luna took over the position as Board Secretary.

On June 4, 2009, pursuant to their May 2009 request, the Complainants were provided access to all of the Association's documents in the possession of TCMG. The manager testified that he kept the office open late that night in order to accommodate the Complainants and that he provided the Complainants access to all documents. The Complainants did not testify that they had additional documents that they wanted to review which were not provided during this review.

The testimony clearly indicates that at no time did the Association ever prohibit or impede the Complainants' ability to review the Association's documents and in fact,

another Board member offered to assist Arneja in accomplishing that goal. The current Board President admitted that they had many issues with IKO and in light of those issues, had terminated IKO and hired TCMG. Accordingly, while the management company may have been unresponsive and unhelpful, there is absolutely no evidence that the Association obstructed the Complainants' access to documents or that the Association condoned the lack of responsiveness from IKO. As such, the panel does not find that the Association violated the governing documents or Maryland law.

II. The Complainants' Terms as Board Members Were Not Curtailed Early

The Complainants testified that they were elected to their positions in July 2006, and that as such, they each had a 3-year term pursuant to Article V of the Goshen Run Bylaws. Accordingly, because both of their positions were up for election at the 2008 annual meeting, it is their contention that their terms had been improperly shortened. The evidence presented at the hearing and in large part the Complainants' own exhibits, shows that in 2006, the Board elected the Complainants to fill the vacancies on the Board and their terms were up at the next annual meeting.

On November 8, 2005, Marshall Deutsch ("Deutsch"), the President of the Board of Directors, sent an email to the current Board members, Dorothy Branning ("Branning"), Gabriel Riley ("Riley"), Olly Norris ("Norris"), Mariella Light ("Light"), Miranda Snavelly ("Snavelly") and Veronica Chavez ("Chavez"), which clarified the terms of the directors currently on the Board. See Complainants Exhibit 5. Per the e-mail, the Board seats for Norris, Deutsch and Riley were up for election at the July 2006 Annual Meeting. However, according to Complainants' Exhibit 3, as of July 12, 2006, Riley, Branning, Chavez and Norris were still on the Board and Gross was now also a Board

member. Complainants' Exhibit 3 is a document entitled "Board Minutes – July 12, 2006" and it states that three people volunteered for Board positions, Arneja, Luna and Sue Bahr, and that they "were elected to serve on the Board." Gross, the current Board President, testified that the July 2006 meeting was a Board meeting and there were two vacancies on the Board. She testified that the Complainants volunteered to fill the vacancies and the Board voted for them to take those positions.²

On May 20, 2008, Riley sent an email to the current Board members, Gross, Arneja, Luna, Norris, Sumbal (Last name unknown) and Chavez. Like the November 2005 e-mail, the e-mail details each director's term. The key sentence in the email states "[Luna], [Arneja] and Sue were elected to positions that were held by [Light] and [Snively] in 2006." Accordingly, this sets out the logical explanation why Riley and Norris remained on the Board as of the July 2006 Board meeting even though their terms were up – the Board believed that they were filling two Board vacancies at that meeting with the volunteers – and the current Board members remained in place.

Article V, Section 6 of the Bylaws provides:

Vacancies in the Board of Directors caused by any reason other than a vote of the membership shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until a successor is elected by the members at the next annual meeting to serve out the unexpired portion of the term. (Emphasis added.)

The Bylaws state that when a vacancy occurs, the Board votes on the people to fill the vacancies. See *a/so*, Md. Code Ann., Corps & Ass'ns, § 2-407 (c) (1).

Accordingly, while we believe that the Complainants' were elected to the Board, they were elected by the Board, not the membership, to fill vacancies and their terms expired

² The Association's governing documents permit the Board to be comprised of up to 9 people, so the appointment of 3 additional directors did not impermissibly increase the number of directors.

at the next annual meeting. Since no meeting was held in 2007, then their terms ended at the 2008 annual meeting and the Board correctly put those positions up for election. As such, we find that the Association did not improperly reduce the Complainants' terms on the Board.

III. There Was Insufficient Evidence that the Association Did Not Allow All Candidates for Election to the Board of Directors an Equal Opportunity to Submit Statements in the 2008 Election

The only testimony the panel heard on this issue was a statement by Arneja that he had only three to four days notice to submit his statement. Luna did not provide any testimony regarding this issue. Notably, Arneja testified that he did not run for election in 2008, so whether he had the same amount of time to submit his statement as other candidates is irrelevant since there could be no prejudice. Accordingly, the panel does not find that there was any violation by the Association.

IV. There Was Insufficient Evidence that the Association Allowed the Manager to Submit Open Proxy Ballots in the 2008 Election and that There Was a Violation of the Governing Documents or Maryland Law.

The panel heard extremely brief testimony from Arneja on this issue, which was that the proxies should have been sealed, instead of being opened by the manager. There was no testimony or evidence that there was any tampering by the manager or evidence that the votes had been modified or changed. Since the Complainants had been given the opportunity to review these items in June 2009, we assume that had any of those issues been present, they would have been mentioned. Accordingly, the panel does not find that there was a violation.

V. There was no Evidence to Support the Allegation that the Association Falsified Arneja's Payment Record in Order to Disqualify Him as a Candidate in the 2008 Election.

Arneja testified that he was told that there were unpaid late fees on his account and as such, he was ineligible to run for an office. According to Arneja, he made his payments in a timely manner, but his account history with management did not show the correct dates when payments were submitted. Gross testified that there were problems with the management company's processing of payments and that they were generally unhappy with the management company. However, there was no testimony that the Association, namely its Directors, ever told the management company to do this in order to disqualify Arneja as a candidate. In addition, Arneja testified that he chose not to run for election in 2008 or in 2009; accordingly, we have no evidence that he was disqualified from being a candidate. Had he submitted his candidacy statement and the Association denied him the right to run for election, then maybe there would be an issue for us to review. Accordingly, the panel finds no violation by the Association.

ORDER

The Complainants' request for relief is denied and this matter is dismissed.

Commissioners Farrar and Gannon concurred in this opinion.

Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order pursuant to the Maryland Rules of Procedure governing administrative appeals

Chair

Ursula Koenig Burgess, Panel

September 30, 2009

